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January 22, 2021

## **VIA ECF**

Hon. District Judge Mary Kay Vyskocil  
US District Court – SDNY  
Daniel Patrick Moynihan  
US Courthouse  
500 Pearl Street  
New York, NY 10007

**RE:    *Nelson Sosa, et al. v. Bentis Fresh Bread, Inc., et al***  
**Civil Docket No.: 1:20-cv-04705**

## **LETTER MOTION REQUESTING ADJOURNMENT OF MOTION & TO SUBMIT AN OMNIBUS OPPOSITION**

To Your Honor:

This office represents Plaintiffs Nelson Sosa and Ruben Velez in the above captioned action. This letter motion is submitted for an extension of the time for Plaintiffs to respond to the dual motions to dismiss by Defendants, submitted by their individual counsel. As opposing the motions involves the submission of similar and near identical oppositions and that each motion's opposition is due weeks apart, Plaintiffs' request that the Court adjourn the corresponding deadlines to one date, so that Plaintiff may submit an omnibus opposition to the same. Plaintiffs request an adjourned date of February 8, 2021.

On November 6, 2020, the Court order that Plaintiffs, if intending, file an amended complaint on or about November 30, 2020, with Defendants to file their respective motions two weeks thereafter. (Dkt. No. 27). Due to filing errors, the Amended Complaint was not officially accepted by the Clerk until December 4, 2020. (Dkt. No. 32). On December 3, 2020, Defendant filed a first letter motion to extend the deadline to file their motion to dismiss, which was done on consent from all Parties. (Dkt. No. 30). The motion deadline was extended to January 1, 2021 and responses to the same due on January 22, 2021. (Dkt. No. 31).

On January 1, 2021, Defendants Louis Bentivegna and Olde Bakery Shoppe, Inc. filed a motion to dismiss the complaint alleging the motor carrier exemption applied to Defendants, and that the aforesaid Defendants were not legally joint employers of the Plaintiffs at the Defendants' business. (Dkt. Nos. 33-35).

On January 4, 2021, Defendants Bentis Fresh Bread, Inc. and Anthony Bentivegna filed a first letter motion to adjourn the then passed deadline to file a motion to dismiss, and requested three weeks to do so. (Dkt. No. 36).

On January 4, 2021, your Honor granted the aforesaid letter motion granting the three week adjournment, making the motion to dismiss due on January 22, 2021. (Dkt. No. 37).

On January 19, 2021, aforesaid Defendants filed their motion to dismiss, also alleging that the motor carrier exemption applied to them. (Dkt. No. 38-41). The response to that motion is due on February 17, 2021.

As the Plaintiffs have prepared for an opposition to the first motion to dismiss, Plaintiffs due not request the Court adjourn the motion to the later date, but that the difference is split and Plaintiffs are allowed to respond to both motions in an omnibus opposition, due to be filed no later than **February 8, 2021**. This request for an adjournment also furthers the goal of judicial economy, allowing the Court to review both motions and the combined opposition together.

This is Plaintiffs' first request. Plaintiff has not obtained consent of Defendants as the first opposition is due tomorrow, January 22, 2021, and needed an expedited response to this request, should the need to file their opposition tomorrow.

Plaintiffs thank the Court for its time and appreciation and await its decision regarding the subject motion.

Best regards,

*s/s Kevin S. Johnson*

Kevin S. Johnson, Esq.

MICHAEL FAILLACE AND ASSOCIATES, P.C.

*Attorneys for Plaintiffs*